

BOISE, FRIDAY, JANUARY 20, 2023 at 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**SHAUN BASS and LAREE BASS,
Husband and Wife,**

**Plaintiffs-Counterdefendants-
Respondents,**

V.

**DONALD ESSLINGER and
JENNIFER ESSLINGER, Husband
and Wife,**

Docket No. 49240

**Defendants-Counterclaimants-
Appellants,**

and

DOES I-X,

Defendants.

Appeal from the District Court of the Second Judicial District of the State of Idaho, Idaho County. Gregory FitzMaurice, District Judge.

Law Office of Westley W. Hoyt, Clearwater, for Appellants.

Creason, Moore, Dokken & Geidl, PLLC, Lewiston, for Respondents.

This appeal concerns the ownership of 1/3 of an acre of land between two parcels in Idaho County, Idaho. The Esslingers have owned the northern parcel since 2019, and the Southern parcel has been in the Bass family since 1927. The dispute between the neighbors' concerns where a property line between the two is located: the Basses believe the line parallels a historic fence between the two properties that existed from around the 1930s until recently. The Esslingers, because they are preparing to sell their land in the area, had the land surveyed in October, 2021, which led them to believe that their property line was actually about 100 feet south of the fence.

Based on this belief, the Esslingers tore down the historic boundary fence, mowed, took down trees, and dug up other land features. When the Basses discovered the actions taken by the Esslingers, they filed for and were granted a temporary restraining order to prevent the Esslingers from doing any more work on the property. After the restraining order, the State initiated proceedings against the Esslingers for criminal trespass. The criminal charges were dismissed in February, 2022, but caused many hiccups throughout lifetime of this case.

The district court eventually granted summary judgment for the Basses. This appeal concerns four actions taken by the district court: the decision not to take judicial notice of a case file from 2006 concerning the land in question, the district court's finding that a boundary by agreement existed at the fence line, the denial of a motion to continue a summary judgment hearing pending the criminal charges, and the denial to augment the record with the proof of the dismissed criminal charges.